

Mind the Gap: A New United Nations Complaints Mechanism for Children

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Human

rights treaties established under the umbrella of the United Nations have all been equipped with complaints procedures for individuals affected by human rights violations. Not so the [Convention for the Rights of the Child](#), the so-called CRC. But this is now about to change with the introduction of a new human rights protocol. From Monday, 14 April 2014, children who have suffered violations of their inherent rights will be able to bring complaints directly to the United Nations. A new international treaty enters into force and ends a long-standing void in the United Nations system when it comes to the implementation of the rights of children. But it falls short of the high hopes of many rights groups campaigning for the effective recognition of children as rights holders.

Finally an international complaints mechanism for children's rights violations

When Costa Rica ratified the new treaty on 14 January 2014, it became official: After a campaign first [initiated by NGOs](#) in 2007, the CRC, which entered into force in 1990, would finally have its own individual complaints mechanism. The treaty, which goes by the name of '[Optional Protocol to the Convention on the Rights of the Child on a Communications Procedure](#)', but is often simply referred to as 'OP3 CRC', had previously been ratified by Albania, Bolivia, Gabon, Germany, Montenegro, Portugal, Slovakia, Spain and Thailand. [Enough ratifications](#) have now been gathered for the treaty to enter into force.

The CRC has been ratified almost unanimously by states – except by Somalia, South Sudan and the United States – making it the most ratified human rights treaty in history. Yet, so far the CRC has been the only core international human rights treaty without a mechanism for victims to seek justice internationally – either when

they could not get redress for violations of their rights nationally in the first place or had exhausted all domestic remedies.

Children's rights continue to be heavily violated all over the world – from the lack of child-friendly legal systems in many countries, including in the heartland of Europe, widespread cover-up of sexual abuse in religious institutions or the deadly attacks on so many children's lives by drone strikes in Pakistan and Yemen over the last years. The list is long. And an effective complaints mechanism much needed.

Complaints can now be brought directly to the [Committee on the Rights of the Child](#), a UN treaty body of 18 independent children's rights experts. But the Committee should not be confused with a traditional court setting: its decisions will not be binding and cannot ultimately be enforced. Much like with the Rome Statute, which established the International Criminal Court in 2002, only new or ongoing violations fall under the mechanism's remit. Past violations will not be covered and a state is not bound by the treaty until it ratifies it.

Children or their representatives can bring complaints concerning the violation of rights guaranteed under the Convention on the Rights of the Child, the first Optional Protocol to the CRC on the sale of Children, child prostitution and child pornography and the second Optional Protocol to the CRC on the involvement of children in armed conflict.

The rocky road to the OP3

Until December 2011, when the UN General Assembly adopted the OP3, the CRC was the only treaty which had a mandatory reporting procedure, but no communications procedure for individuals. [All other](#) UN human rights treaties, like the ones on torture, racial discrimination, migrant workers or enforced disappearances, were fitted out with a complaints mechanism, albeit mostly optional for Member States, from the outset. Under the framework of the '[International Coalition for the Optional Protocol to the Convention on the Rights of the Child on a Communications Procedure](#)', NGOs have been campaigning for States to ratify the additional protocol to the CRC.

At the end of long negotiations, all that States were able to agree to was a treaty which leaves many provisions optional for States to choose from – quite unlike the much stronger mechanism NGOs had had in mind.

Another pick-n-mix treaty

Now the treaty has ended up as quite a 'pick-n-mix' agreement: various provisions allowing for different complaints under the protocol are either phrased as an 'opt in' or 'opt out' and some communications procedures that were intended to be included originally have been abolished completely, making for overall much less effective children's rights implementation.

Most importantly, the provision allowing for collective communications by victims was scrapped entirely as States couldn't agree to it in the end. Apart from the

[‘individual complaint’](#), two other complaints procedures are now available at the Committee: so-called ‘inter-state communications’ now allow complaints by one signatory State against another over their implementation of children’s rights. Through ‘inquiry communications’ for grave or systematic violations of children’s rights, the Committee can now conduct investigations of violations in a Member State itself.

Germany and the OP3

The Bundestag [voted unanimously](#) for the ratification of the OP3 in November 2012. The German government then signed and ratified the protocol in February 2013. [Germany](#) will now become one of the ten countries against which complaints under the OP3 can be addressed – and it will be able to bring complaints directly against other Signatories, provided they have accepted the inter-state complaints mechanism. 37 additional countries have already signed the treaty, but have not yet moved on to ratify it. Depending on the individual domestic procedures needed for ratification, this will again take a while.

Development of international law on children’s rights

The third Optional Protocol to the Convention on the Rights of the Child is not quite the all-inclusive package campaigners had been working towards. But it nonetheless makes the UN better equipped to address future violations of children’s rights. It will also serve to put more pressure on countries to ensure respect of children’s rights. This could help to further develop the claim of children as holders of specific rights and will assist in the development of international law in this important field of human rights law.

It also makes the UN Committee for the Rights of a Child much more accessible for children themselves. While international law is often intangible – and is naturally often criticised to this end – this is where the law actually becomes hands-on. Applicants should of course remain realistic and keep in mind that this new mechanism cannot offer the same kinds of remedies an actual court could. But apart from children’s figurative ‘foot in the door’ of universal human rights, the OP3 is likely to achieve one important goal: it will bring publicity to the claimants’ cases beyond their domestic domain by giving children’s rights an international legal forum.

